



**CHIMICLES**  
SCHWARTZ KRINER &  
DONALDSON-SMITH LLP

ATTORNEYS AT LAW

KIMBERLY M. DONALDSON-SMITH  
KDS@CHIMICLES.COM

VIA E-MAIL

# MEMO ENDORSED

The Honorable Valerie E. Caproni  
United States District Court Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

ONE HAVERFORD CENTRE  
361 WEST LANCASTER AVENUE  
HAVERFORD, PA 19041  
PHONE: 610-642-8500  
FAX: 610-649-3633

December 31, 2019

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 1/2/2020

Re: Milliken v. American Realty Capital Hospitality Advisors, LLC et al., No. 18-CV-1757 (VEC)

Dear Judge Caproni:

I write on behalf of all parties and the Special Litigation Committee (“SLC”) to inform the Court that a settlement in principle has been reached that resolves all claims asserted in this Action as between and among Plaintiff Milliken, Hospitality Investors Trust, Inc. (the “Company”), the AR Defendants<sup>1</sup>, and the Individual Defendants.<sup>2</sup> The settlement in principle was reached with the able assistance of Lawrence Pollack, JAMS mediator, provided during the parties’ in-person mediation session and subsequent numerous telephonic conferences and written communications. As was already reported to the Court and set forth in the SLC Report, a settlement in principle was separately, previously reached with Defendant Jonathan P. Mehlman, the Company’s chief executive officer.

In light of this development, the parties and SLC propose the following:

- (1) The SLC will withdraw, without prejudice, its Partial Motion to Dismiss (Dkt. #120), which would then moot the deadlines set forth in the Court’s December 26, 2019 Order (Dkt. #122).
- (2) A Motion for Preliminary Approval, including the Stipulations of Settlement and attendant settlement papers, will be filed by January 31, 2020.

Therefore, the parties respectfully request that the Court vacate the deadlines set forth in its December 26, 2019 Order (Dkt. # 122), so that the parties may concentrate on documenting the proposed settlement. The SLC’s counsel joins in that request.

<sup>1</sup> The AR Defendants are: Nicholas S. Schorsch, William M. Kahane, Peter M. Budko, Edward M. Weil, Brian S. Block, AR Capital, LLC, American Realty Capital Hospitality Advisors LLC, American Realty Capital Hospitality Properties LLC, American Realty Capital Hospitality Grace Portfolio LLC, and AR Global Investments LLC.

<sup>2</sup> The Individual Defendants are: current or former Directors Stanley R. Perla, Abby M. Wenzel, and Robert H. Burns; and the Company’s former chief financial officer Edward T. Hoganson.

The Honorable Valerie E. Caproni

December 31, 2019

Page 2

The parties can be available at the Court's convenience to discuss the foregoing.

Respectfully submitted,



---

Kimberly M. Donaldson-Smith

cc: All Counsel of Record (via ECF)  
Scott Sherman (via Email)

Application GRANTED. The motion to dismiss (Dkt. 120) is DENIED without prejudice as withdrawn. The deadlines set in this Court's December 26, 2019, Order (Dkt. 122) are VACATED. The motion for preliminary approval of settlement is due no later than **January 31, 2020**.

The Clerk of Court is respectfully directed to close the open motion on Dkt. 120.  
SO ORDERED.



1/2/2020

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE